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AN ACT

RELATING TO THE INVESTMENT OF PUBLIC MONEY; INCREASING THE PERCENTAGE OF THE SEVERANCE TAX PERMANENT FUND THAT MAY BE INVESTED IN REAL ESTATE; EXPANDING THE TYPE OF ALLOWABLE REAL ESTATE INVESTMENTS; ALLOWING, UNDER CERTAIN CIRCUMSTANCES, THE SEVERANCE TAX PERMANENT FUND TO BE INVESTED IN HEDGE FUNDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-27-5.1 NMSA 1978 (being Laws 1983, Chapter 306, Section 8, as amended) is amended to read:

"7-27-5.1. MARKET RATE INVESTMENTS.--

A. Money made available from the severance tax permanent fund for investment for a period in excess of one year in market rate investments may be invested in the following classes of securities and investments:

(1) bonds, notes or other obligations of the United States government, its agencies, government-sponsored enterprises, corporations or instrumentalities and that portion of bonds, notes or other obligations guaranteed as to principal and interest and issued by the United States government, its agencies, government-sponsored enterprises, corporations or instrumentalities or issued pursuant to acts or programs authorized by the United States government;

(2) bonds, notes, debentures and other

1 obligations issued by the state of New Mexico or a
2 municipality or other political subdivision of the state that
3 are secured by an investment grade bond rating from a
4 national rating service, pledged revenue or other collateral
5 or insurance necessary to satisfy the standard of prudence
6 set forth in Section 6-8-10 NMSA 1978;

7 (3) bonds, notes, debentures, instruments,
8 conditional sales agreements, securities or other evidences
9 of indebtedness of any corporation, partnership or trust
10 organized and operating within the United States rated not
11 less than Baa or BBB or the equivalent by a national rating
12 service;

13 (4) bonds, notes, debentures, instruments,
14 conditional sales agreements, securities or other evidences
15 of indebtedness rated not less than BB or B or the national
16 association of insurance commissioners' equivalent by a
17 national rating service. An investment made under this
18 paragraph shall be in publicly traded debt issues with an
19 outstanding par value of at least one hundred million dollars
20 (\$100,000,000) and issued by a corporation, partnership or
21 trust listed on a national exchange and organized and
22 operating within the United States; provided that investments
23 made pursuant to this paragraph shall not exceed three
24 percent of the market value of the severance tax permanent
25 fund, calculated at the time of investment;

1 (5) notes or obligations securing loans or
2 participation in loans to business concerns or other
3 organizations that are obligated to use the loan proceeds
4 within New Mexico, to the extent that loans are secured by
5 first mortgages on real estate located in New Mexico and are
6 further secured by an assignment of rentals, the payment of
7 which is fully guaranteed by the United States in an amount
8 sufficient to pay all principal and interest on the mortgage;

9 (6) common and preferred stocks and
10 convertible issues of any corporation; provided that it has
11 securities listed on one or more national stock exchanges or
12 included in a nationally recognized list of stocks; and
13 provided further that the fund shall not own more than five
14 percent of the voting stock of any company;

15 (7) real estate investments, including real
16 property and undivided interests in real property, debt
17 instruments secured by liens on real property, or limited
18 partnership interests; provided that the total value of
19 investments made under this paragraph shall not exceed ten
20 percent of the market value of the severance tax permanent
21 fund, calculated at the time of investment;

22 (8) securities of non-United States
23 governmental, quasi-governmental, partnership, trust or
24 corporate entities, and these may be denominated in foreign
25 currencies; provided:

1 (a) aggregate non-United States
2 investments shall not exceed fifteen percent of the book
3 value of the severance tax permanent fund;

4 (b) for non-United States stocks and
5 non-United States bonds and notes, issues permitted for
6 purchase shall be limited to those issues traded on a
7 national stock exchange or included in a nationally
8 recognized list of stocks or bonds;

9 (c) currency contracts may be used for
10 investing in non-United States securities only for the
11 purpose of hedging foreign currency risks and not for
12 speculation;

13 (d) the investment management services
14 of a trust company or national bank exercising trust powers
15 or of an investment counseling firm may be employed; and

16 (e) reasonable compensation for
17 investment management services and other administrative and
18 investment expenses related to these investments shall be
19 paid directly from the assets of the fund, subject to
20 budgeting and appropriation by the legislature;

21 (9) stocks or shares of a diversified
22 investment company registered under the federal Investment
23 Company Act of 1940, as amended, and listed securities of
24 long-term unit investment trusts or individual, common or
25 collective trust funds of banks or trust companies that

1 invest primarily in equity securities authorized in
2 Paragraphs (6) and (8) of this subsection; provided that the
3 investment company has total assets under management of at
4 least one hundred million dollars (\$100,000,000); and
5 provided further that the council may allow reasonable
6 administrative and investment expenses to be paid directly
7 from the assets derived from these investments, subject to
8 budgeting and appropriation by the legislature;

9 (10) participation interests in New Mexico
10 real-property-related business loans. The actual amount
11 invested under this paragraph shall not exceed ten percent of
12 the severance tax permanent fund and shall be included in any
13 minimum amount of severance tax permanent fund investments
14 required to be placed in New Mexico certificates of deposit.
15 Investments authorized in this paragraph are subject to the
16 following:

17 (a) the state investment officer may
18 purchase from eligible institutions a participation interest
19 of up to eighty percent in any loan secured by a first
20 mortgage or a deed of trust on the real property located in
21 New Mexico of an eligible business entity, or its subsidiary,
22 that is operating or shall use loan proceeds to commence
23 operations within New Mexico plus any other guarantees or
24 collateral that may be judged by the eligible institution or
25 the state investment officer to be prudent. To be eligible

1 for investment the following minimum requirements shall be
2 met: 1) the loan proceeds shall be used exclusively for the
3 purpose of expanding or establishing businesses in New
4 Mexico, including the refinancing of such businesses for
5 expansion purposes only. If a portion of the loan proceeds
6 were used for refinancing or repaying an existing loan and
7 payment of principal and interest to the state has not been
8 made within ninety days from the due date, unless extended
9 pursuant to agreement between the originating institution and
10 the state investment officer, the originating institution
11 shall buy back the state's participation interest in the loan
12 and begin foreclosure proceedings; 2) eligible business
13 entities shall not include public utilities or financial
14 institutions or shopping centers, apartment buildings or
15 other such passive investments; 3) the minimum loan amount
16 shall be two hundred fifty thousand dollars (\$250,000) and
17 may be met by packaging up to ten separate loans satisfying
18 the requirements of this paragraph. The maximum loan amount
19 shall be two million dollars (\$2,000,000); 4) the loan
20 maturity shall be not less than five years or more than
21 thirty years; 5) the maximum loan-to-value ratio shall be
22 seventy-five percent and based on current appraisal of the
23 real property by an appraiser who is licensed or certified in
24 New Mexico and approved by the state investment officer,
25 which shall be made not more than one hundred eighty days

1 from the loan origination date; 6) the interest rate of the
2 loan shall be fixed for five years and shall be adjusted at
3 every fifth anniversary of the note to the rate specified in
4 Item 7) of this subparagraph; 7) the yield on the state's
5 participation interest shall in no case be less than the
6 greater of the then-prevailing yield on United States
7 treasury securities of five-year maturity plus two and
8 one-half percent or the yield received by the lending
9 institution calculated exclusive of servicing fees; 8) if
10 payment of principal or interest has not been made within one
11 hundred eighty days from the due date, unless extended
12 pursuant to agreement between the originating institution and
13 the state investment officer, the originating institution
14 shall buy back the state's participation interest in the
15 loan, substitute another qualifying loan or begin foreclosure
16 proceedings; and 9) if foreclosure proceedings are commenced,
17 the state and the originating institution shall share in
18 proportion to their participation interest, as provided in
19 this subparagraph, in the legal and other foreclosure
20 expenses and in any loss incurred as a result of a
21 foreclosure sale;

22 (b) a standardized participation
23 agreement, the form of which shall be approved by the
24 attorney general's office, shall be executed between the
25 investment office and each eligible originating institution.

1 The participation agreement shall provide that the
2 originating institution shall not assign its interest in any
3 loan covered by the agreement without the prior written
4 consent of the state investment officer;

5 (c) a formal forward commitment program
6 may be instituted by the state investment officer with the
7 approval of the council;

8 (d) the council shall adopt
9 regulations: 1) defining passive investments;
10 2) establishing underwriting guidelines; 3) ensuring
11 diversification across a variety of types of collateral,
12 types of businesses and regions of the state; and
13 4) providing for the review by the state investment officer
14 of servicing and other fees that may be charged by the
15 eligible institution;

16 (e) eligible institutions include
17 banks, savings and loan associations and credit unions
18 operating in the state; and

19 (f) real property is defined as land
20 and attached buildings, but excludes all interests that may
21 be secured by a security interest under Article 9 of the
22 Uniform Commercial Code, and mineral resource values; and

23 (11) hedge funds that invest primarily in
24 publicly traded securities and derivatives and use long and
25 short positions and leverage to reduce market exposure in

1 order to profit from security selection; provided that:

2 (a) the hedge fund advisors shall be
3 registered under the federal Investment Company Act of 1940;
4 and

5 (b) the hedge fund advisors: 1)
6 provide audited financial statements to the state investment
7 officer; 2) agree to provide regular reports detailing
8 underlying fund investment holdings and transactions to the
9 state investment officer and a third party risk assessment
10 firm designated by the state investment officer; 3) possess a
11 three-year performance record that has been reviewed by the
12 state investment officer; and 4) manage a minimum of one
13 hundred million dollars (\$100,000,000) of investments in the
14 investment strategy to be used for the investment made
15 pursuant to this paragraph;

16 (c) investments made pursuant to this
17 paragraph shall not exceed ten percent of the market value of
18 the severance tax permanent fund, calculated at the time of
19 investment.

20 B. Not more than sixty-five percent of the book
21 value of the severance tax permanent fund shall be invested
22 at any given time in:

23 (1) securities described in Paragraphs (6),
24 (8) and (9) of Subsection A of this section; and

25 (2) investments described in Paragraph (11)

1 of Subsection A of this section in which the underlying asset
2 or asset class is a security described in Paragraph (6), (8)
3 or (9) of Subsection A of this section.

4 C. No more than ten percent of the book value of
5 the severance tax permanent fund shall be invested at any
6 given time in securities described in Paragraph (3) of
7 Subsection A of this section that are rated Baa or BBB.

8 D. Assets of the severance tax permanent fund may
9 be combined for investment in common pooled funds to
10 effectuate efficient management.

11 E. Commissions paid for the purchase and sale of
12 any security shall not exceed brokerage rates prescribed and
13 approved by national stock exchanges or by industry
14 practice." _____

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